

REMARKS

Claims 1- 12 are pending in the application and stand rejected.

Rejection under 35 U.S.C §102

Claims 1, 2, 4, 6, and 9-12 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,822,136 to Niemeyer. Applicants have reviewed the reference with care, paying particular attention to the passages cited, and are compelled to respectfully disagree with the Examiner's characterization of this reference. However, solely in the interest of easing the passage of this case to issue, Applicants have hereby amended claim 1 to incorporate the limitations previously recited in claims 2, 3, 6-8 and 10, and canceled claims 2, 3, 6-8 and 10 without prejudice. Applicants submit that amended claim 1 is clearly novel and nonobvious over Niemeyer.

As presently amended, claim 1 recites that the absorber has an hourglass shape, which allows the upright portion of the gathers and thus the height the claimed diaper can accommodate to be increased (this is discussed, *inter alia*, at page 12, lines 7-14 of the specification). This is so because there is no absorber in the groin portion of the user when the hourglass-shaped absorber is fastened and which, because it is highly bendable, can form the waste pocket with higher volume due to both greater depth and width. Furthermore, because the presently claimed diaper is formed with a minimum of pulp and SAP (super-absorbent polymer), the gathers are not "crunched down" by a large bulge that would otherwise be formed in the absorber when water is absorbed and retained therein. This is because although the absorber will swell somewhat upon absorbing water, the hourglass shape of the absorber will minimize the portion of the bulge that is located in the groin portion of the fastened diaper. Furthermore, because the front and back portions of the absorber are not fastened, they can absorb water unhindered and this absorbed water is distributed throughout the entire volume of the fastened diaper. Applicants submit that the diaper presently claimed by amended claim 1 confers many advantages that are not bestowed by the diaper of Niemeyer and is novel and nonobvious over Niemeyer. Applicants thus respectfully request the Examiner to kindly reconsider and pass claims 1, 4, 9, 11 and 2 to issue.

Rejection under 35 U.S.C §103

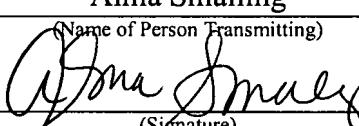
Claims 3, 5, 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Niemeyer. Claims 3, 7 and 8 have been incorporated into claim 1. Claim 5 depends from claim 1. “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, in light of the above discussion of claim 1, Applicants submit that claim 5 is also allowable at least by virtue of its dependency on claim 1.

In view of the above, Applicants submit that the application is now in condition for allowance and respectfully urge the Examiner to pass this case to issue.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

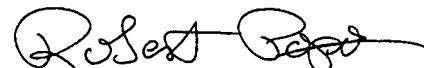
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(Date of Transmission)

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(Name of Person Transmitting)

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Respectfully submitted,



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